

**IN THE UNITED STATES BANKRUPTCY COURT**  
**FOR THE DISTRICT OF IDAHO**

<b>IN RE</b>	)	
	)	<b>Case No. 99-41628</b>
ROGELIO YBARRA SERNA	)	
and YVETTE SERNA,	)	<b>SUMMARY ORDER DENYING</b>
	)	<b>TRUSTEE’S OBJECTION TO</b>
<b>Debtors.</b>	)	<b>DEBTORS’ AMENDED CLAIM</b>
_____	)	<b>OF EXEMPTION</b>

**Background and Facts**

In this Chapter 7 case, Trustee L.D. Fitzgerald (“Trustee”) has objected to Debtors’ Rogelio Ybarra and Yvette Serna (“Debtors”) amended claim of exemption as to their federal income tax refund under Idaho Code § 11-605(10). After a hearing was held on August 8, 2000, the matter was taken under advisement.

The facts are not in dispute. Debtors filed their voluntary petition on September 28, 1999. Their schedules were filed on October 1, 1999, at which time they claimed a \$400 exemption under Idaho Code § 11-605(10) for a 1978 Dodge pickup. On April 21, 2000, Debtors amended Schedule C to reflect

a \$400 claim of exemption in their 1999 federal income tax refund, such refund totaling \$1,658.<sup>1</sup>

The Trustee objected to the amended claim of exemption because Idaho Code § 11-605(10) had been amended by the Idaho Legislature in late 1999 to limit the so-called “catch-all” exemption to tangible personal property. The statutory amendment was effective on April 12, 2000. Because on the date Debtors filed their amended exemption claim Idaho law did not allow a debtor to claim nontangible personal property (such as a tax refund) exempt, Trustee argues Debtors’ exemption must be disallowed. Debtors assert that the exemption law in effect at the time their bankruptcy petition was filed controls, and since that date preceded the Legislature’s changes to Idaho Code § 11-605(10), they should be allowed the \$400 exemption in their federal tax refund.

## **Disposition**

On September 28, 1999, the date Debtors’ bankruptcy petition was filed, Idaho Code § 11-605(10) provided an exemption for “[a]n individual’s aggregate interest in any property, not to exceed the value of eight hundred

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<sup>1</sup> Trustee does not challenge Debtors’ right to amend their schedules. See Fed. R. Bankr. P. 1009(a) (“[a] voluntary petition, list, schedule, or statement may be amended by the debtor as a matter of course at any time before the case is closed”).

dollars (\$800).” This provision is frequently referred to by those involved in bankruptcy practice as the “catch-all” exemption. In an amendment which took effect on April 12, 2000, the Legislature restricted the catch-all to “[a]n individual’s aggregate interest in any *tangible personal* property, not to exceed the value of eight hundred dollars (\$800)” [emphasis added].

Debtors concede that under the current version of Idaho Code § 11-605(10), their interest in their federal tax refund would not qualify as tangible personal property. This concession is well-founded given the erudite opinion recently issued by Judge Myers interpreting the amended exemption statute. See *In re Duman*, — I.B.C.R. — (Bankr. D. Idaho 2000), (Memorandum of Decision, Case No. 00-20417, Docket No. 15). In *Duman*, the Court held while the documents reflecting interests in such things as savings and checking accounts, stocks and bonds are themselves “tangible,” the rights those documents represent to payment are intangible and therefore not eligible for exemption under the newly amended version of Idaho Code § 11-605(10).

Instead, as they should, Debtors rely upon Section 522(b)(2)(A) of the Bankruptcy Code, arguing the Code compels application of the exemption law in effect at the time of their petition filing. Section 522(b)(2)(A) allows a debtor to claim an exemption for “any property that is exempt under Federal law

. . . or State or local law *that is applicable on the date of the filing of the petition*  
. . . . 11 U.S.C. § 522(b)(2)(A) [emphasis added]. “Like the Code, case law  
makes it clear that a debtor’s exemption rights are determined as of the date of  
the petition.” *Wolf v. Salven (In re Wolf)*, 248 B.R. 365, 367 (9<sup>th</sup> Cir. B.A.P. 2000)  
(citations omitted); *see also Hyman v. Plotkin (In re Hyman)*, 967 F.2d 1316,  
1319, n. 2 (9<sup>th</sup> Cir. 1992) (despite increase in state homestead exemption to  
\$75,000, debtors only allowed to claim \$45,000 exemption “because an  
exemption amount is determined on the date the petition is filed”).

The Court appreciates the bright-line approach taken in the Code  
for dealing with changes in exemption laws. Given the propensity of some  
legislatures to revisit the exemption statutes, in Idaho such occurring almost  
annually, the Code’s solution is certainly a practical one. Case law  
acknowledges Congress’s mandate. In fact, the Court has taken this very  
approach on a number of occasions, but to the detriment of debtors who were  
attempting to amend their schedules to take advantage of newly amended  
exemption provisions which would have enhanced their rights. *See, e.g., In re*  
*Stanger*, 99.3 I.B.C.R. 120, 121 (Bankr. D. Idaho 1999) (debtor not allowed to  
claim \$800 exemption in mountain bike, as catch-all exemption was not added to  
the statute until after his petition was filed); *In re Fackrell*, 90 I.B.C.R. 372

(Bankr. D. Idaho 1990) (debtor restricted to \$500 exemption in automobile, as increase in exemption occurred after her petition was filed). It is only fair, then, that the same principles apply when the statutes are amended to restrict previously allowed exemptions.

As he must, Trustee argues the issue presented is different than that examined by the Court previously. Here, he notes, the right to the catch-all exemption was completely eliminated for non-tangible personal property before Debtors amended their exemption claims. The Court agrees the *nature* of the statutory amendment was different than in previous cases. However, the Court can conceive of no reason to apply a varying standard simply because an exemption has been diminished or eliminated, rather than enhanced, postpetition.

As a final argument, Trustee asserts the tax refund did not exist on the date the petition was filed, thereby rendering the catch-all exemption unavailable to Debtors until April 17, 2000, when their tax returns were filed, after the effective date of the amendment. Because of this, Trustee argues, Debtors are limited to the exemption allowed in the current version of Idaho Code § 11-605(10).

The Court doubts Trustee truly wishes the Court to adopt his position. If so, Trustee and his creditor-beneficiaries risk serious injury to their interests in cases yet to come from the other edge of this sharp sword. As Debtors observe in their arguments to the Court, if Trustee was correct, and Debtors' right to their refund did not exist until they filed their tax return, the refund would not be property of the bankruptcy estate at all. Obviously, Trustee's argument would allow debtors to control whether tax refunds become property of their bankruptcy estate through the timing of their petition filing. Fortunately for the creditors in most cases, such is not the law. 11 U.S.C. § 541(a); *U.S.A. v. Sims (In re Feiler)*, 218 F.3d 948, 955 (9th Cir. 2000) (citing *Segal v. Rochelle*, 382 U.S. 375, 379 (1966) (entitlement to tax refund is property of the estate even though bankruptcy petition filed in the middle of the year)).

For these reasons, Trustee's objection to Debtors' amended claim of exemption is hereby **DENIED**. Debtors claim of exemption as to \$400 of their federal income tax refund is hereby **ALLOWED**.

**IT IS SO ORDERED.**

DATED This \_\_\_\_\_ day of August, 2000.

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JIM D. PAPPAS  
CHIEF U.S. BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

I, the undersigned, hereby certify that I mailed a true copy of the document to which this certificate is attached, to the following named person(s) at the following address(es), on the date shown below:

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CASE NO.: 99-41628

CAMERON S. BURKE, CLERK  
U.S. BANKRUPTCY COURT

DATED:

By \_\_\_\_\_  
Deputy Clerk